

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

UNITED STATES OF AMERICA,      )  
                                      )  
Plaintiff,                        )  
                                      ) CIVIL ACTION FILE  
v.                                 )  
                                      ) NO: 1:16-CV-03088-ELR  
STATE OF GEORGIA,                )  
                                      )  
Defendant.                        )

**DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
FOR STAY OF PROCEEDINGS**

Defendant State of Georgia moves to dismiss the Complaint filed by Plaintiff United States of America, pursuant to Federal Rule of Civil Procedure 12(b)(6).

As discussed in Defendant's brief in support of this motion, the Complaint fails to state a claim upon which relief can be granted because (1) the United States Department of Justice ("DOJ") lacks standing to bring claims under Title II of the Americans with Disabilities Act ("ADA"); (2) the State does not "administer" the GNETS program and the Complaint fails to allege actionable discrimination; (3) the Individuals with Disabilities Education Act ("IDEA") governs the educational placement of a student with disabilities, and an ADA claim alleging

actions that are covered under IDEA fails as a matter of law; and (4) “obey-the-law” injunctions are prohibited in the Eleventh Circuit.

In the alternative, Defendant moves to stay these proceedings based on a recent decision by the Southern District of Florida in C.V. v. Dudek, No. 12-60460-CIV-ZLOCH, 2016 WL 5220059 (S.D. Fla. Sept. 20, 2016). There, the district court dismissed DOJ’s claim under Title II of the ADA, holding that DOJ does not have standing to bring such a claim. In Dudek, DOJ has asked the district court to vacate its previous decision to consolidate its case and enter a final judgment under Federal Rule of Civil Procedure 54(b), so that DOJ can appeal.

For these reasons, more thoroughly discussed in Defendant’s brief in support of this motion, Defendant respectfully requests that the Complaint be dismissed for failure to state a claim, or in the alternative, that this Court stay these proceedings until the Eleventh Circuit has decided whether Plaintiff DOJ has standing to bring a Title II claim under the ADA.

This 1<sup>st</sup> day of November, 2016.

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**L.R. 7.1(D) CERTIFICATION**

I certify that this brief has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this brief has been prepared using 14-pt Times New Roman Font.

*/s/ Alexa R. Ross* \_\_\_\_\_  
Alexa R. Ross  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the within and foregoing  
**DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE,**  
**FOR STAY OF PROCEEDINGS** with the Clerk of Court using the CM/ECF  
system, which automatically sent counsel of record e-mail notification of such  
filing.

This 1<sup>st</sup> day of November, 2016.

/s/ Alexa R. Ross

Alexa R. Ross